

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 MUHAMMED ZBEIDA TILLISY,
13 Defendant.
14

Case No. CR13-310RSL

ORDER DENYING MOTION
TO SUSPEND EXECUTION
OF JUDGMENT AND
MOTION TO APPOINT
COUNSEL

15 This matter comes before the Court on defendant's "Motion to Suspend Execution of
16 Judgment" (Dkt. # 236) and third "Motion to Appoint Counsel" (Dkt. # 235). Defendant is
17 currently a prisoner in the custody of the State of Washington. Dkts. # 235 at 2, 4 # 236 at 1;
18 Inmate Search, Department of Corrections Washington State, [https://doc.wa.gov/information/](https://doc.wa.gov/information/inmate-search/default.aspx)
19 inmate-search/default.aspx (last visited Oct. 8, 2021). Defendant is to serve federal sentences
20 consecutively for the above-captioned matter and a supervised release violation in another
21 matter (CR09-269). Dkt. # 194 at 3.

22 Defendant seeks an order suspending execution of the judgment issued by this Court,
23 which remains pending due to defendant's current incarceration in the custody of the State of
24 Washington. Dkt. # 194. Defendant makes the same request in the matter of United States v.
25 Tillis, CR09-269 MJP, where he faces another criminal judgment to run consecutively. CR09-
26 269 MJP, Dkts. # 239 (Motion to Suspend), # 232 (Judgment).¹ Defendant requests the
27

28 ¹ This Order addresses only the above-captioned matter.

1 suspension of judgment so that he can then petition the State for “Extraordinary Medical
2 Placement.” Dkt. # 236 at 1–2. Defendant claims that the pending federal judgments prevent
3 him from filing the petition. Id. at 1. And defendant seeks release from State custody to avoid
4 contracting COVID-19 or injuring his head, which he claims is more susceptible to injury after
5 his “crainectomy.” Id. at 1–2. To assist in his Motion to Suspend, Defendant also seeks
6 appointment of counsel. Dkt. # 235 at 1–2.

7 While the Court is sympathetic to defendant’s concerns about contracting COVID-19 or
8 suffering a head injury, it is unpersuaded by the merits of defendant’s request. Invoking the
9 Court’s inherent authority, defendant seeks the suspension of the judgment solely to petition the
10 State for extraordinary medical placement. But extraordinary medical placement is only
11 available if, among other things: (1) the offender’s medical care is “serious enough to require
12 costly care or treatment”; (2) it would result in cost savings; (3) the offender is likely to be
13 physically incapacitated at the time of placement; and (4) the offender poses a low risk to the
14 community because he is incapacitated due to age or a medical condition. See Dkt. # 238 at 21
15 (Extraordinary Medical Placement Policy, DOC Num. 350.270(C)). Defendant offers no
16 argument as to how he would or could satisfy any of these requirements. The Court’s own
17 review of the record suggests defendant is unlikely to obtain relief under this policy. In
18 particular, the Court sees no evidence that defendant is incapacitated, notwithstanding his
19 medical history. This undermines the basis for the requested relief. And the Court finds no other
20 grounds that would warrant a suspension of judgment. Defendant admits that he is asking the
21 Court to “take a flyer on [him and a] leap of faith.” Dkt. # 236 at 3. The Court declines to do so
22 given the lack of justification. Accordingly, the Court DENIES the Motion to Suspend (Dkt.
23 # 236).

24 As to defendant’s request for appointment of counsel, defendant has previously filed two
25 motions to appoint counsel. Dkts. # 220, # 227. In defendant’s first motion, he summarized his
26 medical challenges and asked for counsel to be appointed to explore the potential for his
27 compassionate release under 18 U.S.C. § 3582(c)(1)(A). Dkt. # 220 at 1–2. Defendant alleged
28 that he could not request “Extraordinary Medical Placement” for his state sentence due to a
ORDER DENYING MOTION TO SUSPEND AND
MOTION TO APPOINT COUNSEL - 2

1 detainer resulting from his federal conviction. Id. On April 17, 2020, the Court denied
2 defendant's initial motion, finding it premature where defendant was not yet in federal custody.
3 Dkt. # 224 at 3. The Court explained that "appointment of counsel and the use of public
4 defender resources is best utilized when Defendant is in federal custody." Id. As for defendant's
5 second motion, defendant argued that the federal judgment is "operative" and that he must be
6 able to contest his federal sentence via 18 U.S.C. § 3582(c)(1)(A), with the assistance of
7 counsel, where it is affecting potential release under his state sentence. Dkt. # 227 at 1.
8 Defendant also described his medical challenges. Id. at 3. Upon review of defendant's second
9 motion, the Court observed that "appointment of counsel may be warranted . . . especially in
10 light of Defendant's recent surgery," but the Court had insufficient information to determine
11 whether the interests of justice required appointment. Dkt. # 229 at 4. The Court referred the
12 matter to the Office of the Federal Public Defender ("OFPD") for review on February 2, 2021,
13 and ordered that the OFPD advise the Court if it intended to seek appointment in this matter. Id.
14 A subsequent minute order, dated February 23, 2021, reflects that the OFPD advised the Court
15 that defendant "currently has an attorney assisting him in the Washington state court with issues
16 related to his health and confinement." Dkt. # 230 at 1–2. The Court concluded that appointment
17 of counsel was unwarranted and informed defendant that he "may renew his motion once he
18 enters federal custody or if other reasons justify seeking appointment of counsel before he enters
19 federal custody." Id. at 2.

20 Defendant's instant motion requests that the Court appoint counsel "to petition [the]
21 [C]ourt to suspend the execution" of his federal sentence before it begins. Dkt. # 235 at 1.
22 Defendant reasserts that he cannot request "Extraordinary Medical Placement" due to a detainer
23 resulting from his federal conviction. Id. at 2. Defendant argues that the Court has "inherent
24 authority" to suspend the execution of this sentence "so he may seek release via Extraordinary
25 Medical Placement for the remainder of his state sentence." Id. Defendant contends that
26 "historically," courts have allowed defendants months or years to begin serving their prison
27 sentence, and he refers to 18 U.S.C. § 3141 as allowing for a defendant's release prior to the
28 beginning of a federal sentence. Id. To the extent that defendant seeks appointment of counsel to
ORDER DENYING MOTION TO SUSPEND AND
MOTION TO APPOINT COUNSEL - 3

1 pursue compassionate release, which defendant acknowledges has already been rejected, *id.* at 1,
 2 the Court finds that defendant has not presented any new arguments justifying appointment
 3 before his entry into federal custody. To the extent that defendant seeks appointment of counsel
 4 to pursue a request for release pending execution of his sentence under 18 U.S.C § 3141, this
 5 statute concerns the authority of the Court to release a defendant, *inter alia*, “pending imposition
 6 or execution of sentence,” but it does not permit the Court to alter a sentence requiring that
 7 certain terms of federal imprisonment run consecutively to certain terms of state imprisonment,
 8 i.e., requiring that defendant serve one term immediately following another. See generally 18
 9 U.S.C. § 3141; Dkt. # 194 at 3 (Judgment stating that the federal terms of imprisonment will run
 10 consecutively with the sentences in the state matters).² Defendant has not persuaded the Court
 11 that he is entitled to appointment of counsel to pursue the relief he requests. Additionally, given
 12 the Court’s analysis on the Motion to Suspend, it finds that appointment would not materially
 13 assist the Court in resolving the issue. The Court therefore DENIES the Motion to Appoint
 14 Counsel without prejudice.

15 For the foregoing reasons, defendant’s Motion to Suspend (Dkt. # 236) is DENIED, and
 16 defendant’s Motion to Appoint Counsel (Dkt. # 235) is DENIED without prejudice. The Clerk is
 17 directed to provide copies of this Order to defendant and all counsel.

18 DATED this 8th day of October, 2021.

21 

22 Robert S. Lasnik
 23 United States District Judge
 24

25 ² Defendant does not appear to be seeking relief under §§ 2241, 2254, or 2255 of title 28, nor has
 26 it been established that “interests of justice” would require appointment of counsel. See 18 U.S.C.
 27 § 3006A(a)(2) (providing that “representation may be provided for any financially eligible person
 28 who . . . is seeking relief under section 2241, 2254, or 2255 of title 28” when “the court determines that
 the interests of justice so require”).